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MUNICIPAL CORPORATIONS—TEMPORARY INJUNCTION TO RESTRAIN PROSECUTIONS UNDER A MUNICIPAL ORDINANCE—MODIFICATION.—City authorities passed an ordinance, which prohibited the removing or carrying away any stone, sand or earth from the beach or from the water within 300 feet of high-water mark of the lake, within certain city limits. Parties owning land along the lake took stone from this land above the high-water mark. The city officials threatened to enforce the ordinance against these parties. The property owners then brought a bill to restrain the enforcement of the ordinance. *Held*, that a temporary injunction was properly dissolved on motion. *C. Beck Co. v. City of Milwaukee* (1909), — Wis. —, 120 N. W. 293.

The real point of controversy in this case was as to the extent of the ordinance. The city authorities contended that the land which the owners insisted on using was part of the "beach," and that the ordinance prohibited the removal of sand from any part of the beach. The owners contended that since the land was above the high-water mark it was their own property and the use thereof was not subject to any interference. Taking the city authorities at their own pretense as to the scope of the ordinance, the owners sought to have the ordinance declared void and prosecutions thereunder restrained. The majority of the Supreme Court held that the ordinance was legal in that it prohibited the removal of sand only *below* the high-water mark. As the injunction sought to restrain the enforcement of the ordinance, it was dissolved on account of the validity of the ordinance. MARSHALL, J., dissented on the ground that the defendants could not lawfully interfere with the use of property above the high-water mark, and that the injunction should be so modified as to restrain such interference. The majority holding seems to be on purely technical grounds and the equities of the case to strongly favor the dissenting opinion. There appear to be no cases exactly in point. There is authority, however, for the proposition that the enforcement of a void municipal ordinance may be enjoined, where an injunction is necessary for the purpose of avoiding a multiplicity of suits. 5 Pom. Eq. JUR., § 354; *Davis v. Fasig*, 128 Ind. 271, 27 N. E. 726; *Newport v. Newport etc. Co.*, 90 Ky. 193, 13 S. W. 720; *Sylvester Coal Co. v. St. Louis*, 130 Mo. 323, 51 Am. St. Rep. 566; *United Traction Co. v. Waterliet*, 35 Misc. Rep. 392, 71 N. Y. Supp. 977. It is also held, that a court of equity will enjoin such prosecutions when they are resorted to or threatened as a means of preventing the enjoyment of property rights. *Milwaukee etc. Co. v. Bradley*, 108 Wis. 467, 84 N. W. 870; *Schlitz Brewing Co. v. Superior*, 117 Wis. 297, 93 N. W. 1120. In view of the general principles of equity and the recent decision by this court in the case of *Stange Co. v. Merrill*, 134 Wis. 514, 115 N. W. 115, that, "In case of a motion to vacate a temporary injunctive order, and it clearly appearing that such order is proper in part, it should be modified accordingly," and the broad principle laid down by this same court in the recent case of *Milwaukee etc. Co. v. Bradley*, 108 Wis. 467, 84 N. W. 870, that, "With the familiar principle in view that jurisprudence goes as far as reason will permit under the circumstances of each particular case to discountenance useless litigation and prevent irreparable injury, one need not feel bound in every case to test the right of a person to proceed by injunc-

tion, by precedents," it seems strange that the court should have refused to modify the injunction so as to protect the plaintiff's rightful use of their own lands.

MUNICIPAL CORPORATIONS—TORTS—LIABILITY FOR NUISANCE—PRIVATE AND GOVERNMENTAL FUNCTIONS.—The defendant, the city of Coleman, purchased a tract of land adjacent to plaintiff's premises and proceeded to use this tract as a public dump, depositing thereon dead animals and other refuse matter collected from the streets of the city. The plaintiff alleges that, by reason of the offensive nature of the matter deposited thereon, this dumping ground has become a nuisance and has permanently injured his property. *Held*, the city in removing garbage and refuse matter from its streets and depositing it on its dumping ground is engaged, in a corporate, rather than a governmental duty, and is liable in damages for the nuisance thereby created, whether guilty of negligence or not. *City of Coleman v. Price* (1909), — Tex. Civ. App. —, 117 S. W. 905.

"The general rule of law undoubtedly is that a municipal corporation has no more right to erect and maintain a nuisance than has a private individual; and an action may be maintained against such corporation for injuries occasioned by a nuisance, in any case in which, under similar circumstances, an action could be maintained against an individual." *City of Fort Worth v. Crawford*, 74 Tex. 404, 12 S. W. 52, 15 Am. St. Rep. 840; *Harper v. Milwaukee*, 30 Wis. 365; *Brower v. Mayor etc. of New York*, 3 Barb. 254. And so long as the city acts in its private, or corporate capacity, the person injured may maintain his action regardless of the negligence, or lack of it, on the part of the city. *Markwardt v. City of Guthrie*, 18 Okl. 32, 90 Pac. 26, 9 L. R. A. (N. S.) 1151. The chief contention of the defendant in the principal case was that the city in removing garbage and other refuse matter from its streets was acting in its governmental, rather than its corporate, capacity. Careful search has revealed no cases supporting this view, but we would venture to say, even in the face of the overwhelming weight of authority, that the position of the city is the more logical and more in harmony with the trend of modern thought. Recent decisions have held that supplying water and lighting the streets are governmental functions. *Springfield Fire and Marine Ins. Co. v. Keeseville*, 148 N. Y. 46, 42 N. E. 405. It is hard to see wherein the act of keeping the streets free from filth is any less governmental.

PUBLIC OFFICERS—RESIGNATION—REVOCABILITY.—F., the incumbent of an office, tendered to the proper official his resignation which was to take effect at such time as the latter should designate. After acceptance of the resignation but before the date upon which it was to become effective, F. withdrew it. A successor to F. having been appointed, quo warranto proceedings were instituted to determine the rightful claimant to the office. *Held*, F.'s withdrawal of his resignation was effectual and he was therefore still rightfully in office. *State ex rel. Almon v. Fowler*, (1909), — Ala. —, 48 South. 985.

The question as to what constitutes a resignation of office and the kindred